

acted in, 1785 under the auspices of some of the most zealous opposers of the powers of the act of congress. It was revised, corrected, and reported by the judges and others appointed to collate and digest all the laws of the state. It was then re-enacted in 1792.

Never during this investigation and re-investigation, did it occur to a single individual, that to order an alien to depart the commonwealth, first under the suggestion of congress under the old confederation, and afterwards under the suggestion of the President under our improved constitution, united legislative, executive, and judicial powers, or deprived an alien of a trial to which he was entitled, viz. trial by jury.

That this measure should originally have been suggested as necessary for national safety, that it should have been preferred through a long course of reflection, that it should be deemed free from the objection of uniting the powers of different departments in the executive, as also an act of depriving an alien from his residence without a trial by jury, and yet that it should for the same causes produce a ferment in some states, as soon as the principle was adopted by Congress, might warrant reflections which we will not permit ourselves to express.

The act entitled "An act in addition to the act intitled an act for the punishment of certain crimes against the United States," and which is commonly called the sedition law, subjects to a fine not exceeding two thousand dollars and to imprisonment not exceeding two years any person who shall write, print, utter, or publish, or cause or procure to be written, printed, uttered, published, or writings against the government of the United States, or either house of Congress of the United States, or the President of the United States, with intent to defame the said government, or either house of Congress, or the said President, or to bring them, or either of them, into contempt or disrepute, or to excite against them, or either or any of them the hatred of the good people of the United States, or to stir up sedition within the United States or to excite any unlawful combinations therein for opposing or resisting any law of the United States, or any act of the President of the United States, done in pursuance of such law, or of the powers in him vested by the constitution of the United States, or to resist, oppose, or defeat any such law or act, or to aid, encourage, or abet any hostile designs, of any foreign nation against the United States, their people, or government; the person accused is to be tried by jury, and may give in evidence the truth of the matter contained in the libel.

To constitute the crime, the writing must be false, scandalous, and malicious, and the intent must be to effect some one of the ill purposes described in the act.

To contend that there does not exist a power to punish writings coming within the description of this law, would be to assert the inability of our nation to preserve its own peace, and to protect themselves from the attempts of wicked citizens, who, incapable of quiet themselves, are incessantly employed in devising means to disturb the public repose.

Government is instituted and preserved for the general happiness and safety—the people therefore are interested in its preservation, and have a right to adopt measures for its security, as well against secret plots as open hostility. But government cannot be thus secured, if, by falsehood and malicious slander it is to be deprived of the confidence and affection of the people. It is vain to urge that truth will prevail, and that slander, when detected, recoils on the calumniator. The experience of the world, and our own experience, prove that a continued course of defamation will at length fully the fairest reputation, and will throw suspicion on the purest conduct. Although the calumnies of the malicious and discontented may not poison the minds of a majority of the citizens, yet they will infect a very considerable number, and prompt them to deeds destructive of the public peace, and dangerous to the general safety.

This the people have a right to prevent; and therefore, in all the nations of the earth where presses are known, some corrective of their licentiousness has been deemed indispensable. But it is contended, that though this may be theoretically true, such is the peculiar structure of our government, that this power has either never been confided to, or has been withdrawn from the legislature of the union.—We will examine these positions. The power of making all laws which shall be necessary and proper for carrying into execution all powers vested by the constitution in the government of the United States, or in any department or officer thereof, is by the concluding clause of the eighth section of the first article, expressly delegated to congress.

This clause is admitted to authorize congress to pass any act for the punishment of those who would resist the execution of the laws, because such an act would be incontrovertibly necessary and proper for carrying into execution the powers vested in the government. If it authorizes the punishment of actual resistance, does it not also authorize the punishment of those acts, which are criminal in themselves, and which obviously lead to and prepare resistance? Would it not be strange if, for the purpose of executing the legitimate powers of the government, a clause like that which has been cited should be so construed as to permit the passage of laws punishing open resistance, and yet to forbid the passage of laws punishing acts which constitute the germ from which resistance springs? That the government must look on, and see preparations for resistance which it shall be unable to control, until they shall break out in open force? This would be an unreasonable and imprudent construction of the article under consideration. That continued calumnies against the government have this tendency, is demonstrated by uninterrupted experience. They will, if unrestrained, produce in any society convulsions, which if not totally destructive of, will yet be very

injurious to, its prosperity and welfare. It is not to be believed that the people of the western parts of Pennsylvania could have been deluded into that unprovoked and wanton insurrection, which called forth the militia of the neighboring states, if they had not been at the same time irritated and seduced by calumnies with which certain presses incessantly teemed, into the opinion that the people of America, instead of supporting their government and their laws would join in their subversion. Those calumnies then, tended to prevent the execution of the laws of the union, and such seems to be their obvious and necessary tendency.

To publish malicious calumnies against an individual with an intent to defame him, is a wrong on the part of the calumniator, and an injury to the individual, for which the laws afford redress. To write or print these calumnies is such an aggravation of the crime, as to constitute an offence against the government, and the author of the libel is subject to the additional punishment which may be inflicted under an indictment. To publish malicious calumnies against government itself, is a wrong on the part of the calumniator, and an injury to all those who have an interest in the government. Those who have this interest and have sustained the injury, have the natural right to an adequate remedy. The people of the United States have a common interest in their government, and sustain in common the injury which affects that government. The people of the United States therefore have a right to the remedy for that injury, and are substantially the party seeking redress. By the 2d section of the 3d article of the constitution, the judicial power of the United States is extended to controversies to which the United States shall be a party; and by the same article is extended to all cases in law and equity arising under the constitution, the laws of the United States, and treaties made or which shall be made under their authority. What are cases arising under the constitution, as contra distinguished from those which arise under the law made in pursuance thereof? They must be cases triable by a rule which exists independent of any act of the legislature of the union. That rule is the common or unwritten law which pervades all America, and which declares libels against government to be a punishable offence, applies itself to and protects any government which the will of the people may establish. The judicial power of the United States then, being extended to the punishment of libels against the government, as a common law offence, arising under the constitution which created the government, the general clause gives to the legislature of the union the right to make such laws as shall give that power effect.

That such was the contemporaneous construction of the constitution, is obvious from one of the amendments which have been made to it. The 3d amendment which declares, that Congress shall make no law abridging the liberty of the press, is a general construction made by all America on the original instrument admitting its application to the subject. It would have been certainly unnecessary thus to have modified the legislative powers of Congress concerning the press, if the power itself does not exist.

But although the original constitution may be supposed to have enabled the government to defend itself against false and malicious libels, endangering the peace, and threatening the tranquility of the American people, yet it is contended that the 3d amendment to that instrument, has deprived it of this power.

The amendment is in these words, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press."

In a solemn instrument, as in a constitution, words are well weighed and considered before they are adopted. A remarkable diversity of expression is not used, unless it be designed to manifest a difference of intention. Congress is prohibited from making any law respecting a religious establishment, but not from making any law respecting the press. When the power of Congress relative to the press is to be limited, the word respecting is dropped, and Congress is only restrained from passing any law abridging its liberty. This difference of expression with respect to religion and the press, manifests a difference of intention with respect to the power of the national legislature over those subjects, both in the person who drew and in those who adopted this amendment.

All abridgement of the freedom of the press is forbidden, but it is only an abridgement of that freedom which is forbidden. It becomes then necessary in order to determine whether the act in question be unconstitutional or not, to enquire whether it does in fact abridge the freedom of the press.

The act is believed not to have that operation, for two reasons.

1st. A punishment of the licentiousness is not considered as a restriction of the freedom of the press.

2d. The act complained of, does not punish any writing not before punishable, nor does it inflict a more severe penalty than that to which the same writing was before liable.

If by freedom of the press is meant a perfect exemption from all punishment for whatever may be published, that freedom never has, and most probably never will exist. It is known to all, that the person who writes or publishes a libel, may be both sued and indicted, and must bear the penalty which the judgment of his country inflicts upon him. It is also known to all that the person who shall libel the government of the state, is for that offence, punishable in the like manner. Yet this liability to punishment for slanderous and malicious publications, has never been considered as detracting from the liberty of the press. In fact the liberty of the press is a term which has a definite and appropriate signification, completely understood. It signifies a liberty to publish, free from previous restraint, any thing and every thing at the discretion of the

printer only, but not the liberty of spreading, with impunity false and scandalous libels which may destroy the peace and mangle the reputation of an individual or of a community.

If this definition of the term be correct, and it is presumed that its correctness is not to be questioned, then a law punishing the authors and publishers of false, malicious and scandalous libels can be no attack on the liberty of the press.

But the act complained of is no abridgement of the liberty of the press, for another reason.

2d. It does not punish any writing not before punishable, nor does it inflict a heavier penalty than the same writing was before liable to.

No man will deny, that at common law, the author and publisher of a false, scandalous and malicious libel against the government or an individual, were subject to fine and imprisonment, at the discretion of the judge. Nor will it be denied, that previous to our revolution, the common law was the law of the land throughout the now United States.

We believe it to be a principle incontrovertibly true, that a change of government does not dissolve obligations previously created, does not annihilate existing laws, and dissolve the bonds of society; but that a people passing from one form of government to another, retain in full force all their municipal institutions not necessarily changed by the change of government. If this be true, then the common law continued to be the law of the land after the revolution, and was of complete obligation even before the act of our Assembly for its adoption. Whether similar acts have been passed by the legislatures of other states or not, it is certain that in every state the common law is admitted to be in full force, except as it may have been altered by the statute law. The only question is, whether the doctrines of the common law are applicable to libels against the government of the United States, as well as to libels against the governments of the particular states. For such a distinction there seems to be no sufficient reason. It is not a magistrate of this or that description that the rules of the common law apply. That he is a magistrate, that he is clothed with the authority of the laws, that he is invested with power by the people, is a sufficient title to the protection of the common law. The government of the United States is for certain purposes, as entirely the government of each state, chosen by the people thereof, and clothed with their authority, as the government of each particular state is the government of every subdivision of that state, and no satisfactory reason has been heretofore assigned why a general rule common to all, and punishing generally the malicious calumniators of magistrates, should not be as applicable to magistrates chosen by the whole, as to those chosen for its different parts.

If then it were even true that the punishment of the printer of malicious falsehoods affected the liberty of the press, yet the act does not abridge that liberty, since it does not substitute a harsher or severer rule of punishment than that which before existed.

On points so extremely interesting, a difference of opinion will be entertained. On such occasions all parties must be expected to maintain their real opinions, but to maintain them with moderation and with decency. The will of the majority must prevail, or the republican principle is abandoned, and the nation is destroyed. If upon every constitutional question which presents itself, or on every question we chuse to term constitutional, the construction of the majority shall be forcibly opposed, and hostility to the government excited throughout the nation, there is an end to our domestic peace, and we may ever bid adieu to our representative government.

The legislature of Virginia has itself passed more than one unconstitutional law, but they have not been passed with an intention to violate the constitution. On being decided to be unconstitutional by the legitimate authority, they have been permitted to fall. Had the judges deemed them constitutional, they would have been maintained. The same check, nor is it a less efficient one, exists in the government of the union. The judges of the United States are as independent as the judges of the state of Virginia nor is there any reason to believe them less wise or less virtuous. It is their province, and their duty to construe the constitution and the laws, and it cannot be doubted, but that they will perform this duty faithfully and truly. They will perform it unwarmed by political debate, uninfluenced by party zeal. Let us in the mean time seek a repeal of any acts we may disapprove, by means authorized by our happy constitution, but let us not endeavour to disseminate among our fellow citizens the most deadly hate against the government of their own creation, against the government, on the preservation of which we firmly believe the peace and liberty of America to depend, because in some respects its judgment has differed from our own.

Various other points, are noticed in the address alike calculated, to excite your resentment, and provoke your resistance. Seriously do we regret, the expression of such sentiments by a body so respectable.

At a time when all ought to unite in repelling every evidence of existence of division in the United States on which division our enemy calculates and with her knowledge of which has had the presumption to upbraid us, it cannot but inflict a deep wound in the American mind to find the commonwealth of Virginia, exhibiting through her legislature irresistible testimony of the degrading charge, nor will the embittering reflection be softened by the declaration of a determination to repel a foreign invasion which is occasionally interposed in those proceedings. Hatred to government is unapt to beget a disposition to unite in its defence, and more probably would project other schemes, coupling de-

ference from invasion, with change of political system. The result of which might be union with the invader, for the purpose of accomplishing a desirable reform. Unfortunately for the human race, such coalitions have happened and unfortunately for the American people, another instance of like conduct may be afforded. Exhortations to disregard foreign danger under pretence of opposing domestic usurpation is an artifice, which has been often used to divide and ruin republican governments.—Switzerland has lately afforded a fatal proof of this melancholy truth, and may heaven avert the like fate from us.

One other fertile topic of complaint against the general government, we must notice; its fiscal arrangements, and increasing expenses. In considering this subject, always recollect that our revolutionary war left the nation with a heavy debt, (the price of its independence) and bereft of the means of discharging it.

When an individual or a nation cannot pay the principal of an honest debt, and can pay the interest, every fair motive commands the principal to be secured and the interest to be punctually paid. Obedience to this honest injunction produced the funded debt of the United States; and altho' we pretend not to say that some mode more consonant to the American character, might not have been adopted, producing the same end, yet we do assert that the mode adopted was the result of much labor, and much investigation and that it received the constitutional sanction. From this we infer that acquiescence in, and support of the system, is the proper conduct of every good citizen.

Added to these, original debts has been the vast expense of defending Kentucky, and the western frontiers from the Indian enemy, and the establishment of government in the north and south western territory.

At present, the defence of the United States claims money, and their defence cannot but swell considerably the public demands.—The stake is our all—and to save his all, who would begrudge a part?

But we derive great consolation in reminding ourselves of the following facts—Our resources are vast, are annually increasing, are managed with ability, and disbursed with integrity—that they are applied to promote the people's good, only consonant to their intention, and by their chosen servants—That the choice of our functionaries recurs as usual, when the faithful servant will receive his reward, and the unfaithful be ordered to depart—That we are a great, powerful and independent nation—and that the safety and happiness of such a people cannot be promoted without proportionate supplies of their money—that the weight of taxation in the congressional system falls almost entirely on the rich—that the capacity to pay rises in proportion to our security from abroad, and our tranquility at home—that the preservation of peace is as it has been, our constant desire, to prevent the interruption of which our government has ably and perseveringly struggled—that war in defiance of all our endeavors, impends over our heads—and that to avert its calamity, we must be prepared to meet it like men.

Continuing to confide in our government—continuing to regard union as the rock of our political salvation, and the constitution as the means of its preservation—continuing to prefer a state of peace without dishonor, we will not turn from the perils of war, with a degraded name, but like our fathers will be ready to risk life and fortune; expecting from the timely exertions of our government, to be enabled to meet any and every enemy on equal terms.

Democratic Judge.

Yesterday a resolution passed the House of Representatives of the Pennsylvania Legislature, requesting the Governor to displace Benjamin Brannan, Esq. from the office of Associate Judge of the county of Delaware. Yeas 57—Nays 11.

Y E A S.

Messrs. Evans, speaker; Albright, Bull, Brown, Buckley, Baird, Blair, Campbell, Dunlap, Erwin, Ewalt, Fisher, Frailey, Follmer, Forster, Hall, Hemphill, Hannum, Hopkins, Hostetter, Horn, Harzaell, Hendricks, Huston, Ingels, Kepple, Keys, Kelly, Kennedy, Krause, Lyle, Meworther, Miller, Martin, McPeerson, McDowell, Power, Preston, Palmer, Rugh, Raums, Seckel, Stocker, A. Scott, Stewart, J. Scott, Speer, Sample, Taylor, Turner, Udree, Van Horne, Wharton, Wright, Wilson, Welles, Williamson.—57.

N A Y S.

Doctor Logan, Boileau, Cunningham, Conrad, Eyre, Linnard, Penrose, Rose, Shoemaker, Snyder, Worrell.—11.

CONGRESS.

Owing to the indisposition of the Speaker, the House of Representatives adjourned this day without proceeding to business.

BALTIMORE, February 1.

A postscript to a letter from Hamburg, of the 29th of November, to a mercantile house in this city.

"Within these few days past, much talk has been caused by the arrest of Napper Tandy, and 6 other United Irishmen, at the request of the British minister. The French minister tells the senate, that if they are not restored in 24 hours, he will leave the city, The senate, however, still keep them in prison, and the matter in dispute is to be referred to the king of Prussia."

Insurance Company of the State of Pennsylvania.

February 1, 1799.
THE Directors have this day declared a dividend of seventy-four dollars on each share of the Stock of this company for the last six months which will be paid to the Stockholders or their legal representatives after the 10th instant.
JAMES S. COX, President.

Late Foreign Articles

BRUNN, November 7.

According to private letters from Constantinople, (say our gazettes) 18 Egyptian Bays have already joined the French, and a great part of the people are entirely won over by them. This, however, appears to require confirmation. It is added, that Buonaparte is collecting all the shipping he can find, and that the French are fully employed in refitting them.

MILAN, October 29.

In the great harbour of Malta is a French ship of the line and three frigates, with two unrigged Maltese ships of war. The French garrison in Malta is provided with meal for a whole year, and hopes to hold out till the stormy weather shall compel the assailants to raise the blockade. According to some accounts, Malta will be restored to the knights of the order, when the negotiation between France and Naples shall be amicably adjusted.

PARIS, November 11

The French corair, le Mercure, has taken an English vessel from China. This vessel had on board a chest of seeds for the king of England. Lebrun the captain of the corair, made a present of them to the botanic garden of Bordeaux. There are 300 different kinds at least, and of the most rare species.

November 19.

The commander of the Anemone advice boat, which was wrecked on the coast of Alexandria in its endeavors to avoid falling into the possession of the English, and which was nevertheless taken by them, was brought into this port on the 17th October. At the time of its departure, Sept. 21, the French army was encamped 30 leagues beyond Cairo, in the most advantageous position. It was abundantly supplied with provisions; but a disorder prevailed in the eyes of the men, which it was expected would cease on the approach of winter. A squadron had made itself master of the whole court of the Delta. Gen. Buonaparte had declared himself Governor of Egypt.

BRUSSELS, November 6.

Yesterday and the day before, during the whole day, there was fighting without intermission upon the canal of Bruges and Antwerp, particularly in the environs of Room, Willebroeck, and of Capell aux bois. A part of this last place was burnt by the republican artillery. The insurgents defended themselves with a rage bordering on despair; they lost a great number in these different actions. An officer and several wounded soldiers have been brought in here.

Yesterday at two o'clock, large detachments of cavalry and infantry with six pieces of cannon, went from hence to attack the rebels again, conjointly with two other columns of troops. There will probably be this day a general attack of the rebels, and there is reason to hope it will be decisive on the points to which it will be directed. We learn on the other hand, that in the departments of the Lys and the Forests, the rebels have again been beaten. Troops from all the armies continue to arrive.

DUBLIN, November 24.

A letter received yesterday from Belfast, mentions that a desperate fire had taken place there in the linen hall, in which two of the squares of that building were consumed.

Extract of an authentic letter from Emma Vale, near Aibione, dated Nov. 22.

"The rebel Hackett has at length paid the forfeit of his crimes; he was shot in the act of pillaging the house of Mr. Atkins."

The Hamburg mail which arrived yesterday brings important papers from the congress at Rastadt, by which our readers will see, that as the Russian troops advance, and the treaties towards a new confederacy draw to a close, the empire becomes more categorical in its demands on the French, and more daring in its language. The French ministers sent off couriers to Paris, and it is thought that the answer will decide the question of peace or war.

In other respects the mail is not important. No step on the part of the French has taken place on the Grillon frontier; but they are busily employed in recruiting their army on the Rhine. The insurrection in Brabant seems to decline a positive massacre. The Leyden Gazette says, that it exhibits only a scene of horror and desolation. The insurgents, pressed by the troops of the French, take refuge in their villages, try in vain there to defend themselves, let fire to their houses, and perish in the flames. It is not true that Syreys has quitted Berlin. That court, notwithstanding its representations on the fate of Ehrenbreitstein, seems still determined to keep aloof from the confederacy, and preclude to its people the blessings of peace.

Richard Bayley & Co.

RESPECTFULLY inform the public that the Retail Business carried on by them at their Store, No. 436, Market Street, will in future be carried on by Mr. Wm. BONNAR, whom they beg leave to recommend to the favor of their friends and the public.

ALL PERSONS indebted to the above firm and those to whom they are indebted, will please to apply to JOHN WHITBREAD & Co. or the settlement of their respective accounts, who are duly empowered for that purpose.

Richard Bayley & Co.

WILLIAM BONNAR, RESPECTFULLY informs his friends and the public, that the above Store will be opened by him on Monday the 4th of February next, with an assortment of

DRY GOODS,

Suitable to the season; which he flatters himself will meet the approbation of those who honor him with their favor.